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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

PAN AMERICAN WORLD AIRWAYS, INC.

Appellant,

v.

GEORGE PUCHERT

Appellee.

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether a complaint against an airline subject to the Railway Labor Act alleging an unlawful discharge of an employee covered by a collective bargaining agreement constitutes a "minor dispute" subject to mandatory arbitration provisions of the Railway Labor Act.

2. Whether a state court has jurisdiction to enforce a state statute which would regulate the discharge of an employee covered by a collective bargaining agreement between a union and an airline where the claim is a "minor dispute" and subject to mandatory arbitration under the Railway Labor Act.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The decision of the Hawaii Supreme Court in Puchert v. Agsalud, No. 8908, Slip. Op. (Hawaii January 27, 1984), from which this appeal is taken, is reprinted as Appendix A.* The Hawaii Supreme Court decision reversed a judgment of the Circuit Court of the First Circuit, State of Hawaii, dated June 22, 1982. There is no reported decision from the circuit court. The circuit court's judgment affirmed a decision of the Director of the Department of Labor and Industrial Relations of the State of Hawaii.

* The appendices to the Jurisdiction Statement are bound in a separate volume.

JURISDICTION

The Appellee filed a complaint with the Hawaii Department of Labor and Industrial Relations seeking relief for an alleged unlawful discharge. The Director of the Department of Labor and Industrial Relations dismissed the complaint as untimely filed. The Circuit Court for the First Circuit, State of Hawaii, affirmed the Director's decision. On appeal the Hawaii Supreme Court reversed the lower court holding, inter alia, that the termination was not a "minor dispute" and that the Hawaii Revised Statute § 378-32 was not preempted by the Railway Labor Act, 45 U.S.C. §§ 151 et seq. See Appendix A. Appellants filed a timely Notice of Appeal to this Court in the Hawaii Supreme Court on April 18, 1984. See Appendix B. The time for docketing this appeal was extended to and including May 25, 1984, by Justice Rehnquist

in an order dated April 20, 1984. See Appendix C.

Because the Hawaii Supreme Court held that Hawaii Revised Statute § 378-32 was not, under the circumstances of this case, preempted by the Railway Labor Act, 45 U.S.C. §§ 151 et seq., this Court has jurisdiction of this appeal under 28 U.S.C. § 1254(2).*

* Pursuant to Rule 28.1 of the Rules of the Supreme Court of the United States, Pan American World Airways, Inc. states that its only subsidiary is Pan American World Services, Inc.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, Section 2 of the United States Constitution provides in relevant part that

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in Every State shall be bound thereby, any Thing in the Constitutions or Laws of any State to the Contrary notwithstanding.

The Hawaii Revised Statutes, §§ 378-31 et seq. are reprinted in full as Appendix D. The relevant sections of the Railway Labor Act, 45 U.S.C. §§ 151 et seq. are reprinted in Appendix E. The relevant sections of the National Labor Relation Act are reprinted in Appendix F.

STATEMENT OF THE CASE

The issue in this case is whether a state court may avoid preemption and usurp an area of exclusive federal regulation by asserting jurisdiction over an employment termination matter which is subject to mandatory arbitration under the Railway Labor Act. The Hawaii Supreme Court held that the state statute, as applied, was not preempted by the Railway Labor Act because the claim was based upon the state statute and not the collective bargaining agreement between Pan American World Airways, Inc. ("Pan Am") and the Transport Workers Union of America ("TWU"). This decision is in direct conflict with the decisions of this Court and the express terms of the Railway Labor Act. If this decision is permitted to stand, it will undercut the well established federal labor policy mandating arbitration as the exclusive means of

resolving minor disputes under the Railway Labor Act.

A. Procedural History

On January 14, 1979, TWU filed a grievance, pursuant to its collective bargaining agreement with Pan Am, for George K. Puchert ("Puchert") with respect to his termination five days earlier. The grievance was brought before the Board of Adjustments which modified the termination to a six months medical leave.

Thereafter, Puchert filed a complaint on June 1, 1979, pursuant to Hawaii Revised Statutes ("HRS") §§ 378-31, et seq., against Pan Am for an alleged unlawful discharge. The complaint was filed with the Enforcement Division of the Department of Labor and Industrial Relations ("DLIR") for the State of Hawaii. Subsequently, on or about August 7, 1979, Puchert was notified of his termination by Pan Am for failing to comply with the

terms of his medical leave as set by the Adjustment Board.

In June, 1980, the DLIR conducted hearings on Puchert's claim. The hearing officer recommended that the complaint be dismissed for lack of jurisdiction due to the untimely filing. The Director of the DLIR concurred with the hearing officer's recommendation and Puchert appealed their decision to the Circuit Court for the First Circuit, State of Hawaii.

The circuit court affirmed the dismissal of Puchert's complaint because it was untimely filed. Judgment was so entered on June 22, 1982, and Puchert appealed to the Hawaii Supreme Court.

The Hawaii Supreme Court reversed the lower court's decision and, inter alia, held that the claim was not a minor dispute and that HRS § 378-32 was not preempted by the Railway Labor Act. Judgment was entered

on January 27, 1984, and a Notice of Appeal filed on April 18, 1984. By order dated April 20, 1984, the time for docketing this appeal was extended to and including May 25, 1984.

B. Statement of the Facts

Pan Am is an air carrier engaged in interstate commerce and subject to the provisions of the Railway Labor Act. Puchert was for several years prior to August 7, 1979 employed by Pan Am as a port steward. Puchert is represented for purposes of collective bargaining by the TWU. The TWU has had a collective bargaining agreement with Pan Am at all times relevant to this action. See Appendix G. The agreement, by its terms, is established under the Railway Labor Act. Appendix G, Art. 1. It expressly recognizes that the Union is the representative of the port stewards. Appendix G, Art. 2. The contract governs termination of the employees,

discipline, discharge, and the resolution of grievances. Appendix G, Arts. 13, 21, 22 and 23.

Puchert allegedly suffered a back injury on December 30, 1978, and did not return to work until January 6, 1979. On January 9, 1979, Pan Am discharged Puchert because he could no longer perform the essential requirements of his position.

On January 14, 1979, the TWU filed a grievance with Pan Am on Puchert's behalf pursuant to the collective bargaining agreement between Pan Am and TWU. The grievance was brought before the Board of Adjustment ("Board") for mandatory arbitration on February 7, 1979. The Board modified Puchert's dismissal to a medical leave of absence not to exceed six months. The Board also required Puchert to obtain a medical report from a doctor approved by Pan Am's

insurer and to qualify for a permanent disability rating from the DLIR Workers Compensation Division that would not restrict him from performing his duties as a port steward.

When Puchert filed his complaint with the Hawaii DLIR on June 1, 1979, alleging that he had been terminated because of a work injury, he was still a member of the TWU and still on medical leave pursuant to the award of the Adjustment Board. Puchert had utilized the grievance procedure of the collective bargaining agreement after his termination in January of 1979, and could have availed himself of that same grievance procedure in August 1979 to contest his termination. Rather, Puchert filed the complaint with the DLIR based upon a state statute which prohibits termination from employment where the sole reason is because the employee suffered a work injury. HRS § 378-32(2).

The DLIR dismissed Puchert's complaint on the grounds that it was not timely filed during the thirty days following his discharge on August 7, 1979. HRS § 378-33. On appeal the Circuit Court affirmed the DLIR decision. However, the Hawaii Supreme Court reversed the lower court and remanded the case to the DLIR for a hearing on the merits. The Hawaii Supreme Court's decision that state jurisdiction was not preempted by the Railway Labor Act is the basis for this appeal.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I. THE HAWAII SUPREME COURT'S DECISION CREATES THE POTENTIAL FOR CHAOS IN THE LABOR RELATIONS OF COMMON CARRIERS

This appeal presents substantial questions regarding a state court's jurisdiction to interfere with the express federal policy of the Railway Labor Act that the

exclusive forum for the resolution of minor disputes is the Board of Adjustment. The Hawaii Supreme Court, by characterizing Puchert's claim as an unlawful discharge rather than as a minor dispute under the collective bargaining agreement, has directed that the claim be resolved under state law. The resolution of this claim under state law infringes upon the exclusive jurisdiction granted to the Boards of Adjustment under the Railway Labor Act.

The history of the Railway Labor Act evidences an intent on the part of Congress to regulate both comprehensively and exclusively the resolution of minor disputes in the interest of protecting the free flow of interstate commerce. A critical concern of Congress in protecting interstate commerce through the regulation of rail and air carriers was the avoidance of strikes growing out of unresolved disputes. Of particular concern

was the resolution of "minor disputes" before they developed into "major disputes" resulting in a strike and the consequent disruption of commerce. Accordingly, federal law mandates that any minor disputes relating to issues covered by a collective bargaining agreement under the Railway Labor Act be exclusively referred to arbitration by Boards of Adjustment. Neither state nor federal courts have jurisdiction to entertain claims relating to or arising out of collective bargaining agreements under the Railway Labor Act. To permit a state to regulate these disputes would impermissibly interfere with the exclusive dispute resolution mechanism established by Congress.

This Court has consistently held that only Congress, through a clear statutory enactment, can alter the express mandate for arbitration of minor disputes. There is no congressional exception in the instant case.

The Hawaii statute is preempted with respect to minor disputes arising under a collective bargaining agreement governed by the Railway Labor Act.

A. The Legislative History of the Railway Labor Act Expresses A Congressional Intent for Mandatory Arbitration of Minor Disputes

The purposes of the Railway Labor Act, originally enacted in 1926 and substantially revised in 1934, are, inter alia, to secure uninterrupted operations by carriers such as Pan Am, to protect the associational rights of the employees of such carriers, and to promote speedy settlement of labor disputes between the employees and the carriers. 45 U.S.C. § 151a. See Felter v. Southern Pacific Co., 359 U.S. 325, 326, n.1 (1959).

The pertinent provisions of the Railway Labor Act which are applicable in

this case, and set forth in full in Appendix E, provide in essence as follows:

§ 151a. General purposes

> The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

45 U.S.C. § 151a.

§ 153. National Railroad Adjustment Board--Establishment; composition; powers and duties;divisions; hearings and awards; judicial review

> First. There is established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is provided--
>
> . . . .

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designed to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

. . . .

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.

45 U.S.C. § 153.

§ 184. System, group, or regional boards of adjustment

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances,

> or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.
>
> It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of sections 181 to 188 of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

45 U.S.C. § 184.

The legislative history of the Railway Labor Act reenforces the interpretation of statutory language that minor disputes must be sent to adjustment boards for

resolution[1] and not to be adjudicated in state courts. The distinction between "major disputes" and "minor disputes" is discussed in greater detail infra. Briefly, however, "minor disputes" are those which arise out of or concern the interpretation of collective bargaining agreements or other incidents of a union-represented employee's employment relationship (such as claims for personal injury) even if such matters are not covered by the agreements. Elgin, Joliet & Eastern Railway Co. v. Burley, 325 U.S. 711, 722-723 (1944).

The 1926 version of the Railway Labor Act[2] called upon carriers and their

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[1]The submission of such disputes to the Adjustment Boards for resolution has often been referred to as "arbitration." However, the procedure under the Railway Labor Act is not strictly "arbitration" in the sense that term is used in other contexts, but rather a mandatory procedure for resolution of such disputes by the Adjustment Board.

[2]44 Stat. 577.

employees to voluntarily agree to the formation of Boards of Adjustment for the resolution of minor disputes. If this step was unsuccessful then these disputes, along with major disputes, became a function of the Board of Mediation, the predecessor of the National Mediation Board.

The lack of compulsion to established boards of adjustment was a major weakness in handling minor disputes. This was evident from the legislative history for the 1934 amendments: "In many instances . . . the carriers and employees have been unable to reach agreements to establish such boards [of adjustment]."[3]

Minor disputes that did reach such boards often remained unresolved because the

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[3]Report of the House of Representatives Committee on Interstate and Foreign Commerce, HR Rep. No. 1944, 73D Cong., 2d, Sess. 3.

boards deadlocked and were unable to reach a majority decision.[4] These factors failed to achieve Congress' expressed legislative purpose of settling all disputes arising out of the interpretation of collective bargaining agreements. Section 2, First.[5]

Amendments were proposed to the Railway Labor Act in 1934 which addressed these problems. One such amendment established the National Railroad Adjustment Board.[6] This eliminated several procedural deficiencies of the prior statute. The most important change made by the 1934 amendments was to eliminate the discretion of the parties in submitting minor disputes to the adjustment board. Under the amended statute, submission of minor disputes to the adjustment board became mandatory, and

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[4] Ibid.

[5] 44 Stat. 577-578.

[6] Section 3, First, 45 USC § 153, First.

the decision of the Adjustment Board is conclusive.[7]

This Court has examined the mandatory resolution of minor disputes by the adjustment board and concluded that Congress intended that all such disputes be resolved by the Board of Adjustment. Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Co. 353 U.S. 30, 39 (1957).

The issue before the Court today is not one of statutory interpretation. The requirement for mandatory resolution ("arbitration") by the Adjustment Board under the Railway Labor Act was decided by this Court in Andrews v. Louisville & Nashville Railroad Co., 406 U.S. 320 (1972). All minor

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[7]Not only is the award of the Adjustment Board conclusive, but review may be taken only to the United States District Court and such review is limited by the statute. 45 U.S.C. § 153(q).

disputes are to be resolved by the adjustment boards and neither state nor federal courts have jurisdiction to hear such claims. 406 U.S. at 322-325. Rather, this appeal raises two issues for review. First, whether the underlying claim herein is a minor dispute? And, if so, if there is any exception which would permit a state court to exercise jurisdiction over that claim pursuant to a state statute?

B. The Discharge of an Employee Subject to a Collective Bargaining Agreement Is a Minor Dispute and Is Subject to Mandatory Arbitration Under the Railway Labor Act

The distinction between major and minor disputes was explained in this Court's decision in Elgin, Joliet & Eastern Railway Co. v. Burley, 325 U.S. 711 (1944). Elgin distinguished disputes over grievances, which are "minor," and disputes arising out of collective bargaining, which are "major."

325 U.S. at 722. Minor disputes contemplate the existence of a collective bargaining agreement rather than any effort to establish such an agreement or to modify an existing agreement. A minor dispute relates to either the meaning or proper application of a particular provision within that agreement in the context of a specific situation, including an individual's employment-related dispute not covered by the collective bargain agreement so long as such disputes are not "major disputes," which concern the creation of the agreement. 325 U.S. at 723.

In Andrews v. Louisville & Nashville Railroad Co., 406 U.S. 320 (1972), this Court overruled Moore v. Illinois Central Railroad Co., 312 U.S. 630 (1941). Andrews held that minor disputes, such as claims for a wrongful discharge, were subject to mandatory submission to a board of adjustment. The decision noted that:

> The notion that the grievance and arbitration procedures provided for minor disputes in the Railway Labor Act are optional, to be availed of as the employee or the carrier chooses, was never good history and is no longer good law.

406 U.S. at 322. A claimant is limited to judicial review of the board's proceedings as provided for in the Act. Gunther v. San Diego & A.E.R. Co., 382 U.S. 257 (1965). Since the Andrews case, lower federal courts have repeatedly recognized they lack jurisdiction to pass on minor disputes under the Railway Labor Act.[8] For example, an association of employees sought to recover damages for loss

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[8] See e.g., Kaschak v. Consolidated Rail Corp., 707 F.2d 902, 905 (6th Cir. 1983); Jackson v. Consolidated Rail Corp., 717 F.2d 1045, 1054-1055 (7th Cir. 1983); Choate v. Louisville & Nashville R.R. Co., 715 F.2d 369, 370 (7th Cir. 1983); Schroeder v. Trans World Airlines, Inc., 702 F.2d 189, 191 (9th Cir. 1983); Radar v. United Transportation Union, 718 F.2d 1012, 1014, (11th Cir. 1983); Stanton v. Delta Airlines, Inc., 669 F.2d 833, 836 (1st Cir. 1982); and Landfried v. Terminal R.R. Ass'n. of St. Louis, 721 F.2d 254, 255 (8th Cir. 1982) to cite but a few.

of work under a breach of contract or tort rationale basis in Railway Labor Executives Association v. Atchison, T. & S.F. Railroad Co., 430 F.2d 994 (9th Cir. 1970), cert. denied, 400 U.S. 1021 (1971). This effort was rebuffed, the court holding:

> Where, as here, the dispute grows out of the employment relationship and, in the final analysis, involves an attempt to impose a right which is incident to that relationship, the statutory forum is the adjustment board, absent a clear expression of legislative policy to the contrary.

430 F.2d at 997. See also Magnuson v. Burlington Northern, Inc., 576 F.2d 1367 (9th Cir. 1978), cert. denied, 439 U.S. 930 (1978).

In like fashion, a railroad employee's attempt to forego railway adjustment board procedures by filing suit in federal court was rejected in Dorsey v. Chesapeake & Ohio Railway Co., 476 F.2d 243 (4th Cir. 1973). The court held specifically:

> Dorsey acknowledges that Andrews requires exhaustion of administrative remedies in cases alleging only a common law breach of contract but contends that

> Andrews left undecided the question a wrongful discharge complaint alleging a constitutional violation should be exempted from the exhaustion requirement. . . . We conclude that Andrews is controlling and that the district court properly found that Dorsey was required to exhaust his remedies with the NRAB before bringing suit in federal court.

476 F.2d at 254 (footnotes omitted).

There can be no doubt but that Puchert's claim with respect to his discharge is a dispute arising under and concerning the interpretation of a collective bargaining agreement provision. The collective bargaining agreement clearly covered claims for wrongful discharge. In fact, Puchert had filed such a claim in the form of a grievance and had been awarded reinstatement by an Adjustment Board only months prior to his filing this claim under the state statute. As such, the Railway Labor Act mandates that resolution of this minor dispute be by arbitration before the Adjustment Board.[9]

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[9] If Appellant was dissatisfied with the Adjustment Board's decision in January, 1979,

Andrews v. Louisville & Nashville Railroad Co., 406 U.S. 320 (1972). The Hawaii Supreme Court erred in its conclusion that this was not a minor dispute subject to the mandatory grievance procedure of the Railway Labor Act.

C. State Courts are Without Jurisdiction to Interfere in Areas of Exclusive Federal Regulations

The Hawaii Supreme Court found that Puchert's discharge was not a minor dispute because "[t]he resolution of the dispute in question does not hinge on the application or interpretation of the collective bargaining agreement between Pan Am and Puchert's union." Puchert v. Agsalud, No. 8908, Slip Op. at 7

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[9]continued

he could have sought clarification of the award pursuant to 45 U.S.C. § 153(m), or he could have filed a petition for review with the United States District Court as allowed under 45 U.S.C. § 153(q).

(Hawaii January 27, 1984) (see Appendix A). The court apparently is of the opinion that because the complaint has been brought under a state statute, it does not find its source in the collective bargaining agreement. Therefore, the court concludes that this claim is not a minor dispute and is not preempted. Ibid. The obvious defect in this reasoning is that while the claim may be covered by a state statute or conceivably could be based on state tort law, it is also covered by the Pan Am-TWU collective bargaining agreement. As it is covered by the collective bargaining agreement, and hence subject to mandatory resolution by the Adjustment Board, the claim is preempted regardless of how it is characterized by the state court.[10]

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[10]As Justice Rehnquist noted in Andrews v. Louisville & Nashville R. Co., 406 U.S. 320, 323-324 (1972):

The Hawaii Supreme Court's reasoning fails to recognize that federal regulation must be enforced in a uniform manner. States are precluded from any regulation where, as here, Congress has clearly and expressly articulated its intention to exclusively regulate a particular area.

The doctrine of preemption was first articulated by Chief Justice Marshall in Gibbons v. Ogden, 22 U.S. (9 Wheat) 1 (1824). In Gibbons this Court ruled that pursuant to the supremacy clause,[11] state law must yield

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[10]continued

> The fact that petitioner characterizes his claim as one for "wrongful discharge" does not save it from the Act's mandatory provisions for the processing of grievances.

So neither can the Hawaii Supreme Court's recharacterization of this claim as one arising under a state statute save it from the Act's mandatory provisions.

[11]U.S. Const. Art. VI, § 2.

where it conflicts with federal enactments. 22 U.S. (9 Wheat) at 210. Since Gibbons this Court has found state statutes preempted where either Congress has clearly articulated its intent to preempt an area, or where that intent is implicit from Congress' occupation of a field or some conflict between the state and federal schemes.

Preemption has been implied by examining the legislative history surrounding the statute's enactment,[12] by determining whether the nature of the subject matter requires national uniformity,[13] and by considering the pervasiveness of the federal statutory scheme.[14]

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[12] See, e.g., Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 153 (1963).

[13] See, e.g., Bethlehem Steel Co. v. New York State Labor Relations Bd., 330 U.S. 767 (1947); Hines v. Davidowitz, 312 U.S. 52 (1941).

[14] See, e.g., City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973); Napier v. Atlantic Coast Line R.R. Co., 272 U.S. 605 (1926).

> Absent explicit preemptive language, Congress' intent to supercede state law altogether may be inferred because "the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it", or because "the act of Congress may touch a field in which the federal system will be assumed to preclude enforcement of state laws on the same subject."

Fidelity Federal Savings & Loan Association v. De la Cuesta, 458 U.S. 141, 153 (1982).

As the Supreme Court recently observed in Silkwood v. Kerr-McGee Corp., 464 U.S. ___, 104 S. Ct. 615 (1984); "If Congress evidences an intent to occupy a given field, any state law falling within that field is preempted." 104 S. Ct. at 621 (citations omitted). Preemption "is compelled whether Congress' command is explicitly stated in the statute's language or impliedly contained in its structure and purpose." Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977).

All of the above criteria support federal preemption in this case. The

legislative history, supra, clearly implies a need to preempt the area, the subject matter demands national uniformity, and the federal statutory scheme is highly pervasive.

Where a conflict occurs between state and federal statutes such that compliance with both is impossible, then the state statute must yield. Gibbons v. Ogden, 22 U.S. (9 Wheat) 1 (1824). This has been held to be so even if the state statute is merely an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[15] This may result when the state statute discourages the conduct which the federal scheme seeks to encourage.[16] The instant case is one of both impossibility and

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[15] See, e.g., Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

[16] See L. Tribe, American Constitutional Law, 378 (1978).

discouragement. On the one hand it is impossible to have mandatory and "conclusive" resolution of minor disputes by the Adjustment Boards if Hawaii courts extend jurisdiction to hear the same claims under a state statute. And on the other hand, the availability of the Hawaii courts to hear these claims will discourage union employees under collective bargaining agreements subject to the Railway Labor Act from seeking the mandatory submission to the adjustment boards.

Where Congress has expressly indicated its intent to preempt an area, state law must yield. The language in the Railway Labor Act is clearly an explicit preemption of this area by Congress,[17] and has been so interpreted by this Court. Andrews v. Louisville & Nashville Railroad Co.,

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[17] Section 3, First, 45 U.S.C. § 153, First.

406 U.S. 320 (1972). In no area has federal preemption been clearer than in matters concerning interstate commerce.[18] This Court expressly ruled in Andrews that the provisions under the Railway Labor Act mandating the submission of minor disputes to the adjustment boards preempt state courts of any jurisdiction to hear such matters. 406 U.S. at 322-325. Congress has here enacted legislation which clearly mandates that minor disputes are to be resolved by arbitration and a state may not enforce a law which would provide an alternative remedy to the exclusive remedy enacted by Congress. This would

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[18] See, e.g., Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978); Douglas v. Seacoast Prod., Inc., 431 U.S. 265 (1977); Jones v. Rath Packing Co., 430 U.S. 519 (1977); City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973); and Andrews v. Louisville & Nashville Railroad Co., 406 U.S. 320 (1972).

clearly conflict with the provisions of the Railway Labor Act requiring mandatory and conclusive resolution by Adjustment Boards and would intrude upon this exclusive federal remedy.

Even absent this mandatory language, it is a fundamental principle of labor law that "settlement of disputes by the parties through the machinery of arbitration" is favored. United Steel Workers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960). This Court in the Steelworkers trilogy provided the following guidance:

> In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail . . . .

363 U.S. at 584-585.

In this case, resolution of the grievability of the issues as well as the substantive issues themselves requires interpretation by the Board of Adjustment.

The Board of Adjustment should determine whether the grievance arising from Puckert's termination is grievable. To the extent necessary the Board of Adjustment is better able to construe ambiguous contract language and apply unambiguous provisions. This approach is appropriate where, as here, the agreement in issue does not give "positive assurance that the arbitration clause is not susceptible of the interpretation that covers the asserted dispute." United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. at 582-583. "Doubts should be resolved in favor of coverage." 363 U.S. at 583. Arbitrators are in a better position to decide issues of arbitrability as they are more familiar with the customs and practices of a particular industry, the collective bargaining agreement at issue, and the parties to such an agreement. United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596 (1960).

Finally, it should be noted that submission to arbitration under the Railway Labor Act is mandatory, whereas under other federal statutes it is merely permissive. This distinction is immanently clear when comparing the mandatory provisions for the adjustment of disputes contained in the Railway Labor Act[19] with the non-mandatory provisions of the National Labor Relations Act.[20] Republic Steel Corp. v. Maddox, 379 U.S. 650, 653 (1955).

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[19] 45 U.S.C. § 153, First, § 184.

[20] 61 Stat. 136, 29 U.S.C. § 173(d):

> (d) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation

D. The Hawaii Supreme Court Erroneously Applied Narrow Exceptions to Preemption Under the National Labor Relations Act to the Railway Labor Act

The Hawaii Supreme Court incorrectly assumed that the Railway Labor Act is synonymous with the National Labor Relations Act with respect to resolution of disputes by arbitration. The court relied upon cases which have created narrow exceptions to

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20 (continued)

> of an existing collective bargaining agreement.... (Emphasis added.)

For a comparison of the deference to arbitration shown under the National Labor Relations Act in various situations, see generally United Technologies Corporation, 115 LRRM 1049 (1984); Columbia Typographical Union No. 101 (Washington Post Co.), 207 NLRB 831 (1973); North Shore Publishing, 206 NLRB 42 (1973); Mountain State Construction, 203 NLRB 1085 (1973); Baltimore Typographical Union No. 12 (A. S. Abell Co.), 201 NLRB 120 (1973); Joseph T. Ryerson, 199 NLRB 461 (1972); and Mailers Union No. 36 (Houston Chronicle), 199 NLRB 804 (1972).

preemption under the National Labor Relations Act. The court assumed these cases should also apply to the Railway Labor Act. The Hawaii Supreme Court further erred in concluding that since Congress has passed legislation creating certain statutory rights which may be concurrently enforced along with the National Labor Relations Act, that a state may also enact statutes to create rights notwithstanding the preemption doctrine. In short, the Hawaii Supreme Court's decision provides that because Congress may have enacted federal statutes providing independent rights which may provide concurrent jurisdiction to other federal rights, that a state may do the same.

For exactly these reasons, the Hawaii Supreme Court's reliance upon the cases cited in its opinion is misplaced. Each can be distinguished as recognizing a

concurrent federal right to those under the National Labor Relations Act pursuant to a federal statute. In Alexander v. Gardner-Denver Co., 415 U.S. 36 (1973); and Harris v. Norfolk & Western Railway Co., 616 F.2d 377 (8th Cir. 1980), the federal right is based on Title VII of the Civil Rights Act of 1964.[21] In Barrentine v. Arkansas-Best Freight System, 450 U.S. 728 (1980), the statute creating the right was the Fair Labor Standards Act.[22] While in the Air Line Pilots Ass'n v. Northwest Airlines, Inc., 627 F.2d 272 (D.C. 1980), the federal statute was the Employees' Retirement Insurance Security Act,[23] and in Johnson v. American Airlines, Inc., 487 F. Supp.

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[21] 42 U.S.C. §§ 2000e et seq.

[22] 29 U.S.C. §§ 201 et seq.

[23] 29 U.S.C. §§ 1001 et seq.

1343 (N.D. Tex. 1980), the Age Discrimination in Employment Act[24] was the federal basis for jurisdiction.

This Court's recent interpretations of the National Labor Relations Act in New York Telephone Co. v. New York State Labor Dept., 440 U.S. 519 (1979), Sears, Roebuck and Co. v. San Diego County District Council of Carpenters, 436 U.S. 180 (1978), and Farmer v. United Brotherhood of Carpenters, 430 U.S. 290 (1977) have created certain narrow exceptions to the preemption formula enunciated in San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959). However, there is no basis in any of these cases which would suggest that these exceptions should be

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[24] 29 U.S.C. § 621 et seq.

applied to the Railway Labor Act. As Justice Powell stated in his dissent in the New York Telephone Co. case:

> The RUIA [Railroad Unemployment Insurance Act], together with the Railway Labor Act, is part of a special system of labor-management relations separate and distinct from the general structure established in the NLRA.

440 U.S. at 564 n. 19. (Powell, J., dissenting.)

As this Court's decisions establish, Congress did not intend to exclusively regulate labor relations under the National Labor Relations Act.[25] Rather, states may regulate various areas of state interest under the

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[25] See, e.g., San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959).

National Labor Relations Act.[26] There are no such exceptions under the Railway Labor Act, however, because federal regulation of minor disputes was intended to be mandatory and exclusive. Andrews v. Louisville & Nashville Railroad Co., 406 U.S. 320 (1972).

E. This Court has Recognized No Exception to the Mandatory Preemption of Minor Disputes Under the Railway Labor Act

The issue presented by this appeal has been well settled ever since this Court overruled Moore v. Illinois Central Railroad Co., 312 U.S. 630 (1949) in Andrews v. Louisville & Nashville Railroad Co., 406 U.S. 320 (1972). However, in light of some of

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[26] See, e.g., New York Telephone Co. v. New York State Labor Dept., 440 U.S. 519 (1979), Sears, Roebuck and Co. v. San Diego County District Council of Carpenters, 436 U.S. 180 (1978), and Farmer v. United Brotherhood of Carpenters, 430 U.S. 290 (1977).

this Court's other decisions with respect to the National Labor Relations Act, there has developed some confusion amongst both state and federal courts with respect to when preemption should apply in a labor relations situation.[27]

This Court's own decisions dealing with preemption in the labor field, and the recognition of some narrow exceptions, have only arisen in the context of the National Labor Relations Act.[28] The narrow exceptions to preemption developed for particular situations which mirror a national policy or

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[27] See generally Cox, Recent Developments in Federal Labor Law Preemption, 41 Ohio State L.J. 277 (1980).

[28] See, e.g., New York Telephone Co. v. New York State Labor Dept., 440 U.S. 519 (1979); Sears, Roebuck and Co. v. San Diego County District Council of Carpenters, 436 U.S. 180 (1978); Farmer v. United Brotherhood of Carpenters, 430 U.S. 290 (1977); and San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959).

concern for certain important issues such as civil rights, sex discrimination, age discrimination, and the application of rules to retirement pension plans, have arisen in the context of the National Labor Relations Act, which does not carry any mandatory provisions for the "conclusive" resolution of certain types of disputes. No exceptions have ever been recognized by this Court with respect to the Railway Labor Act and its mandatory provisions for resolution of minor disputes. Because the Hawaii Supreme Court has used this Court's pronouncements of narrow exceptions to preemption under the National Labor Relation's Act to avoid preemption under the Railway Labor Act, the time is ripe for this Court to reaffirm the clear intent of Congress to preempt jurisdiction for minor disputes under the Railway Labor Act. Congress has determined that all grievances arising under collective bargaining agreements under the

Railway Labor Act are to be subject to the exclusive jurisdiction of the Boards of Adjustment. The alternative is to open the floodgates to myriad state statute and state common law causes of action interfering with every aspect of the labor-management relationship in this sensitive area.

While states may claim certain interests are deeply rooted in local feeling and responsibility, such interest may not warrant an exception to preemption. The Hawaii statute which seeks to protect against unlawful discharge is certainly a local interest. Nevertheless, there is a mandatory alternative forum (which appellee had utilized previously with some success) for resolution of this dispute and the Hawaii statute does not warrant an exception to the express preemption under the Railway Labor Act.

State courts are clearly preempted and lack jurisdiction to address claims which

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are minor disputes. There is no basis to argue that Congress ever intended to create any exception to this mandate for state statutes. To the contrary, the legislative history and the decisions of this Court emphasize the need for a national policy enforced by federal statute and preempting all state claims. Congress clearly announced that the national policy with respect to the Railway Labor Act is to leave the interpretation and application of the collective bargaining agreement to the procedure enunciated in the statute. Absent an equally clear pronouncement from Congress with respect to exceptions to this preemption, this delicate balance should not be upset.

If states are permitted to avoid the preemption of the Railway Labor Act by simply enacting a statute which would call an minor dispute by another name, then they have effectively gutted the entire national

statutory scheme with respect to labor management relations in the rail and airline industries. This is what this Court decided in Andrews v. Louisville & Nashville Railroad Co., 406 U.S. 320 (1972), and this is what this appeal requests be reaffirmed.

II. CONCLUSION

The Hawaii Supreme Court has improperly asserted jurisdiction over an area that is clearly preempted by federal law. Because Congress has preempted this area it must be left to Congress to create any exceptions. This Court should accept this appeal and enunciate an affirmation of the clear Congressional intent under the Railway Labor Act. This Court should distinguish the strong preemption mandated under the Railway Labor Act from the narrow exceptions to preemption permitted under the National Labor Relations Act. Until such a reaffirmation and clarification from this Court has been

pronounced, no federal statute shall stand immune to interference from state court jurisdiction. To avoid this potentially chaotic and hazardous situation, this Court should note jurisdiction and ultimately reverse the judgment of the Hawaii Supreme Court.

Respectfully submitted,

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